

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Amendment of Parts 2, 73, 74 and 90)	
of the Commissions Rules to Permit)	ET Docket No. 03-158
New York Metropolitan Area Public)	MB Docket No. 03-159
Safety Agencies to Use Frequencies)	
at 482-488 MHz)	
)	

To: The Commission

REPLY COMMENTS OF THE UNITED TELECOM COUNCIL

The United Telecom Council (UTC, the Council) hereby submits brief reply comments in response to the Commission's *Notice of Proposed Rulemaking* in the above-referenced proceeding.¹ UTC agrees with the majority of commenters in this proceeding and supports the permanent re-allocation of broadcast television channel 16 (482-488 MHz) to public safety use under Section 303 of the Communications Act of 1934, as amended (the Act).² UTC further agrees with those commenters supporting the use of these frequencies to permit New York public safety agencies to communicate effectively with other entities during emergencies. To that end, UTC urges the Commission to grant flexibility to the permanent licensee or licensees in this band to share frequencies as needed with

¹ *In the Matter of Amendment of Parts 2, 73, 74 and 90 of the Commission's Rules to Permit new York Metropolitan Area Public Safety Agencies to Use Frequencies at 482-488 MHz*, Notice of Proposed Rulemaking, ET Docket No. 03-158, MB Docket No. 03-159, 68 Fed. Reg. 50739 (2003)(NPR, the Notice).

² 47 U.S.C. § 303.

entities meeting the definition of “public safety radio services” in Section 309(j)(2) of the Act.³

Discussion

UTC agrees fully with the several commenters noting the extensive investment New York metropolitan area public safety agencies have made in the communications system operating on the 482-488 MHz band. There also can be no disagreement about the congestion on private land mobile radio (PLMR) spectrum, including public safety frequency pools, in the Nation’s largest city, making such a large and coordinated system impossible to implement on other public safety spectrum currently available.⁴ While eventual transition of broadcast stations to their digital allocations will make public safety’s 24 MHz of new spectrum available more fully, that is not yet the case. In the meantime, the lack of interoperable communications among all emergency responders remains one of the primary communications deficiencies faced by the United States – one for which all Americans pay in every emergency when services are slowed or safety risked unnecessarily as a result.

The New York City Police Department and the New York Metropolitan Advisory Committee (NYMAC) have used the interim allocation of television channel 16 to alleviate severe communications problems. Not surprisingly, a number of agencies in the New York metropolitan area are members of NYMAC and are benefiting from the radio system, including some not generally

³ 47 U.S.C. § 309(j)(2).

⁴ See, e.g., Comments of the National Public Safety Telecommunications Council, at ¶7.

considered traditional public safety agencies, such as the Department of Parks & Recreation and the New York City Transit Authority (NYCTA).⁵ UTC applauds such multi-agency sharing, which not only enhances interoperability for a variety of situations, but also leads to greater spectrum efficiency.

Another entity deeply involved in emergency response has also been a *de facto* member of NYMAC – Consolidated Edison, the electric utility responsible for providing power to the millions of residences and businesses in the New York Metropolitan Area. Any large-scale emergency will find Con Edison's crews present on the scene with more traditional public safety agencies, and in some cases – the major August blackout and the aftermath of Hurricane Isabel are recent examples -- the company's crews often will be the focus of emergency activities.

As stated by Motorola, "[l]oss of this spectrum for public safety . . . would also negatively impact the ability of those agencies to communicate and to interoperate with other agencies critical to protecting the public."⁶ On behalf of Con Edison, UTC requests flexibility for the licensee(s) of a permanent allocation of the 482-488 MHz band to public safety, so that the company may continue to participate in interoperability efforts.

UTC emphasizes that Con Edison does not wish a license to use this spectrum for its own routine communications. Con Edison has invested more than \$20 million in an advanced, digital iDEN™ system in the 800 MHz band, and

⁵ NYCTA notes in its comments that it was a founding member of NYMAC, and currently is extending use of interoperability channels into the subway system. Comments of NYCTA at 2.

will rely on that system for its service and restoration PLMR communications, along with other applications. ConEdison expects its 800 MHz system – now consisting of 23 sites covering its service territory -- to serve its mission-critical and other communications needs for the foreseeable future.⁷

However, the company has been involved in several initiatives related to emergency communications with public safety entities since the attacks in New York City on September 11, 2001. Specifically, the utility is developing a multi-cross-band repeater to provide some measure of inter-agency communications in the city on a limited number of radios. Con Edison is working with the Emergency Management System (EMS), New York City Police Department (NYPD), New York Fire Department (FDNY), Office of Emergency Management (OEM) and the Biological & Chemical Response Team.

Con Edison continues to be involved in New York City emergencies in the capacity of emergency responder alongside traditional Public Safety agencies. Many of these joint responses involve potential hazards to the public, including fires, explosions, gas leaks and power outages. For example, on July 20, 2002, a transformer fire occurred at Con Edison's East River Substation in Manhattan. It resulted in a large presence by New York City first responders - FDNY, NYPD and OEM along with state and federal agencies. There was a need for radios that

⁶ Comments of Motorola, at 3.

⁷ Continued reliable operation during power outages is another important consideration for emergency communications systems. While, like most utilities, Con Edison considers restoring public safety communications a top priority in a wide-scale outage, UTC notes that Con Edison's own 800 MHz system remained operational throughout the August 2003 blackout, as its previous land mobile system also did immediately following the September 11 collapse of the World Trade Center towers.

were not readily available at the site to communicate between the entry team (performing damage assessment) and the Command Post. Con Edison made a request to the FDNY Field Communications Unit to borrow two Handie-Talkie radios (450 MHz band) for the initial entry into the damaged transformer's 7W cubicle, and the radios performed well in providing important communications between the two groups.

Because emergency radio communication is essential for effective coordination among the various first responders, Con Edison also has provided a limited number of its HT1250 portable radios to facilitate more direct communications. For example, radios were provided to the OEM TAC team, and 12 radios are being modified for the Biological and Chemical Response Team to communicate with the FDNY during joint emergencies. Con Edison believes that access to the TV channel spectrum as needed for emergency interoperability will allow it to program public safety channel(s) on its portables, avoiding the cumbersome radio exchange and distribution process.


In the absence of systems that provide full interoperability today, this allocation offers the best opportunity for emergency communications in New York City among the various public safety entities. On a day-to-day, on-the-ground basis, Con Edison is very much a part of that effort. Again, Con Edison does not request a system license in the 482-488 MHz band. However, as a fundamental part of the public safety radio services for the city, its inclusion in communications efforts is vital for real interoperability and the safety of the lives,

health and property of New Yorkers. To ensure full interoperability in New York City, UTC recommends that the Commission make the allocation of this spectrum to public safety permanent pursuant to Section 303 of the Act, and provide flexibility to licensees in the band to share frequencies as they wish with entities included within the definition of public safety radio services under Section 309(j)(2) of the Act.⁸

Conclusion

The re-allocation of 482-488 MHz for public safety communications in the New York metropolitan area clearly is within the public convenience, interest, or necessity – in this case, all three. UTC supports commenters calling for the allocation, and urges the Commission to act to implement the Council's recommendations in this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jill M. Lyon", with a long horizontal flourish extending to the right.

Jill M. Lyon
Vice President & General Counsel
United Telecom Council
1901 Pennsylvania Ave., NW, Fifth Floor
Washington, DC 20006
202.872.0030

October 6, 2003

⁸ UTC notes that, as a metropolitan transit system, this definition also would provide for inclusion

